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IN THE

Supreme Court of the United States

October Term, 1971

No. .....

LEONARD TOMASKET,
Appellant,

v.

THE STATE OF WASHINGTON and
THE SUPERVISOR OF THE TAX COMMISSION
OF THE STATE OF WASHINGTON,
Respondents.

ON APPEAL FROM THE SUPREME COURT OF
THE STATE OF WASHINGTON

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

This case involves the question whether the State of Washington may impose its excise taxes on members of the Colville Confederated Tribes, tribes which are subject to State civil and criminal jurisdiction by reason of Public Law 83-280.[1]

In this case, the Supreme Court of the State of Washington has interpreted Public Law 83-280 in such a sweeping manner that the effect of the decision is to extinguish Indian exemptions and immunities from tax, including

1. App. E, p. E-2.

those flowing from other federal statutes, those implicit in federal programs and policies, and those carefully established and protected by decisions of the Supreme Court. Most important, the decision results in subjecting Indian trust property to state taxation in a manner specifically prohibited by the federal statute.

As applied by the opinion of the Washington Court, the state excise taxes, RCW Chapter 82, now apply to all Indian commerce on each of the eleven Indian reservations over which the State has assumed jurisdiction pursuant to Public Law 83-280. In fact, the Washington Court holds that Public Law 83-280 not only repeals the Federal Indian Trader Statutes but subjects Indians and Indian reservations to all state laws except those expressly excluded by its provisions.

Appellant, Leonard Tonasket, appeals to the Supreme Court from the judgment of the Washington Court issued November 15, 1971, and submits this statement to demonstrate that the Supreme Court has jurisdiction of this appeal which presents substantial federal questions.

OPINIONS BELOW

The opinion of the Washington Court is reported at 79 Wn.2d 607, 488 P.2d 281 (1971), and is reprinted as Appendix A. The superior court's Memorandum Opinion is not reported but is reprinted as Appendix B. The judgment appealed from (being the Remittitur) is reprinted as Appendix C.

JURISDICTION

On March 8, 1967, Leonard Tonasket, a full-blooded Colville Indian, filed a complaint[2] in the Superior Court

2. R. 3.

for the State of Washington for Thurston County, seeking a declaratory judgment that RCW Chapter 82, as applied, is invalid and repugnant to Article I, Section 8, clause 2 of the United States Constitution (the Indian Commerce clause), 25 U.S.C. §261 *et seq.* (the Federal Indian Trader Statutes), 24 Stat. 388 (the General Allotment Act of February 8, 1887), the sovereignty of the Colville Confederated Tribes, decisions of the Supreme Court, federal laws and regulations, and federal Indian policy. The complaint prayed that the State be enjoined from taxing, harassing, or interfering with Leonard Tonasket's retail business conducted on his trust allotment in the Colville Indian Reservation, and the State be directed to return merchandise confiscated from his business.

On March 21, 1968, the matter was tried in the superior court and on October 7, 1968, Honorable Hewitt A. Henry rendered a Memorandum Opinion[3] holding that Leonard Tonasket's business is subject to state taxes and that an injunction would not lie.

On January 21, 1969, judgment[4] was entered adjudging that all the excise tax laws of the State of Washington apply to all commerce on the Colville Indian Reservation, whether by Indian traders or not, as a direct result of assumption of jurisdiction over the Tribes and their members by the State of Washington pursuant to Public Law 83-280.

On January 23, 1969, Leonard Tonasket filed a timely Notice of Appeal.[5]

3. App. B.
4. R. 27.
5. R. 29.

On September 2, 1971, the Washington Court affirmed and expanded the decision of the superior court by rendering a written opinion[6] holding that all State laws apply to the Colville Indian Reservation and its members except those expressly excluded by Public Law 83-280.

On November 15, 1971, the Washington Court issued its Remittitur[7] to the superior court which is the judgment enforcing the written opinion of the Washington Court entered September 2, 1971.[8]

On December 10, 1971, Leonard Tonasket filed, in the Washington Court, a Notice of Appeal[9] to the Supreme Court.

The jurisdiction of the Supreme Court to review this judgment by appeal is conferred by 28 U.S.C. §1257(2) which reads in part:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> • • •
>
> "(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *Warren Trading Post Company v. Arizona State Tax Commission*, 380 U.S. 685, 686 (1965); *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282, 288, 289 (1921).

6. App. A.
7. App. C.
8. RCW 2.04.170, Supreme Court Administrative Rules, Rule 15.
9. App. D.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

United States Constitution, Article I, section 8, clause 2[10] (the Indian commerce clause).

25 U.S.C. §261 *et seq.*, (19 Stat. 200, 1876)[11] (Indian Traders Act).

25 C.F.R. §251 (1965)[12] (regulations of the Bureau of Indian Affairs pertaining to Indian traders).

25 C.F.R. §91.12, §91.13[13] (regulations of the Bureau of Indian Affairs pertaining to loans of tribal funds).

Public Law 83-280 (67 Stat. 588, 18 U.S.C. §1162; 28 U.S.C. §1360)[14] (authorizing states to assume certain jurisdiction over Indian country).

Executive Order of July 2, 1872, 1 Kapp. 916[15] (establishing the Colville Indian Reservation).

Constitution and By-Laws of the Confederated Tribes of the Colville Indian Reservation, Washington.

(Of the following statutes, only those with footnotes appear in Appendix E.)

Title 82 of the Revised Code of Washington covers all of the excise taxes imposed by Washington State law, and the following chapters are involved herein:

Chapter 82.04—business and occupation tax on manufacturers, retailers and other forms of business.

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10. App. E, p. E-1.
11. App. E, p. E-1.
12. App. E, p. E-5.
13. App. E, p. E-6.
14. App. E, p. E-2.
15. App. E, p. E-8.

Chapter 82.08—retail sales tax on all retail sales.

Chapter 82.12—use tax on use of personal property the state.

Chapter 82.16—public utility tax, imposing a tax all persons engaging in certain businesses.

Chapter 82.20—documentary stamp tax on all doc ments transferring interests in land.

Chapter 82.24—tax on cigarettes.
82.24.050—Duty of retailer.[16]
82.24.110—Other offenses—Penalty.[17]

Chapter 82.26—tax on tobacco products.

Chapter 82.28—tax on certain mechanical devices.

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82.32.290—Unlawful acts—Penalties.[21]

Chapter 82.36—motor vehicle fuel tax.

Chapter 82.40—use fuel tax.

Chapter 82.44—motor vehicle excise.

Chapter 82.48—arcraft excise.

Chapter 82.50—house trailer excise.

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16. App. E, p. E-8.
17. App. E, p. E-8.
18. App. E, p. E-10.
19. App. E, p. E-10.
20. App. E, p. E-11.
21. App. E, p. E-12.

QUESTIONS PRESENTED

The basic questions presented are the following:

1. May state excise taxes be validly imposed upon Indian commerce conducted within the boundaries of an Indian reservation, where failure to pay such taxes may result in levy and sale of real or personal property of the Indian taxpayer?

2. Does Public Law 83-280 impliedly repeal the Federal Indian Trader Statutes on Indian reservations which are subject to state civil and criminal jurisdiction?

3. Does Public Law 83-280 make all state laws except those expressly excluded by its provisions, applicable to Indians and Indian reservations which are subject to state civil and criminal jurisdiction?

STATEMENT OF THE CASE

The Colville Confederated Tribes comprise eleven separate tribes of Indians who formerly occupied large areas of Eastern Washington until they were placed upon the Colville Indian Reservation established by Executive Order of the President of the United States in 1872.[22] The Tribes are recognized by the United States Government, Bureau of Indian Affairs, and are governed by a Constitution and By-Laws approved by the Secretary of the Interior, on December 26, 1938. Of the 5,340 enrolled members of the Tribes, approximately half live on the Colville Indian Reservation which encompasses 1.3 million acres and is governed by the 14-member Colville Business Council.

22. App. E, p. E-8.

The land upon which Leonard Tonasket operates his retail store is allotted land held in trust for him by the United States.

Leonard Tonasket, a full-blooded enrolled member of the Colville Confederated Tribes, is a direct descendant of Chief Tonasket of the Okanogan Band, one of the eleven tribes in the confederacy on the Colville Indian Reservation.

In 1963 Leonard Tonasket leased a store in East Omak on the Colville Indian Reservation and established a retail business, selling cigarettes and other merchandise. On April 9, 1964, Leonard Tonasket applied to the Tribal Loan Office for a loan of federally restricted trust funds in the sum of $1,000 specifically for the purchase of a larger cigarette inventory.[23] Mr. Robert D. Holtz, Area Director of the Bureau of Indian Affairs for the Portland Area Office, approved[24] the cigarette inventory loan in the sum of $800, and a mortgage upon Mr. Tonasket's trust allotment S-2026 was given to secure the loan, all pursuant to the provisions of 25 C.F.R. §91.12 *et seq.* Thereafter Leonard Tonasket borrowed an additional $6,000 from the Tribal Loan Office with which to construct a new store building on his trust allotment to expand his retail business.[25]

Because the Federal Indian Trader Statutes do not require a license of a trader on an Indian reservation who is a full-blooded Indian (25 U.S.C §264), Leonard Tonasket could not be required to apply for a federal trader's license. And because he is a full-blooded enrolled member of the Colville Confederated Tribes operating a retail store

23. R. 117.
24. R. 118.
25. R. 81.

on his trust land with the full sanction of the federal government and with federally-restricted funds, Leonard Tonasket did not register with the State of Washington or affix tax stamps to cigarettes in his possession and being sold in his business.

In February of 1967, agents of the Washington Tax Commission entered the Colville Indian Reservation, seized a great number of cigarettes from Leonard Tonasket's trust land, and placed him under arrest for failing to register with the Tax Commission in violation of RCW 82.32.030 and RCW 82.32.290, possessing unstamped cigarettes in violation of RCW 82.24.050 and RCW 82.24.110, and selling unstamped cigarettes in violation of RCW 82.24.050 and RCW 82.24.110.

Approximately 800 cartons of cigarettes were seized from Leonard Tonasket's trust land. As a result of the action of the Washington Tax Commission, Leonard Tonasket commenced the present action in the superior court for Thurston County.

HOW THE FEDERAL QUESTION WAS PRESENTED

Leonard Tonasket's Complaint:

Leonard Tonasket's Complaint averred that he is a full-blooded enrolled member of the Colville Confederated Tribes and operates his retail store on allotted trust land on the Colville Indian Reservation held for him by the United States. The Complaint avers the unlawful entry on Leonard Tonasket's premises by officials of the Washington Tax Commission, their illegal seizure of his cigarettes and his arrest and subjection to criminal charges in the superior court for Okanogan County.

The Complaint prayed for a declaratory judgment declaring Leonard Tonasket entitled to operate his retail business on his trust land on the Colville Indian Reservation free from the provisions of the State excise tax statutes or from State harassment or interference, and for judgment requiring the State of Washington to return all cigarettes illegally confiscated from his trust land.

Memorandum Opinion of the Superior Court of Washington:

The superior court granted judgment in favor of the State, upholding the validity of the actions of the Washington Tax Commission. In its Memorandum Opinion, the trial court stated:[26]

> "In conclusion, the Court is of the opinion that, while the law as cited by the Plaintiff is controlling as to those Indian tribes which have not allowed the assumption of criminal and civil jurisdiction by the state of Washington, in those cases where civil and criminal jurisdiction has been accepted by the state of Washington, the members of the Indian tribes therein are subject to the excise taxes complained of by the Plaintiff herein and the state may further enforce the criminal laws of the state relating to the possession of unstamped cigarettes."

Judgment of the Superior Court of Washington:

In the Judgment, the superior court held:[27]

> "IT IS ORDERED, ADJUDGED and DECREED that, because of the assumption of criminal and civil jurisdiction over the Colville reservation by the state of Washington, the members of the Indian Tribes residing on the Colville reservation, including the plaintiff, are subject to the laws of the state of Washington imposing excise taxes, including but not limited to

26. App. B, p. B-3.
27. R. 27-28.

the provisions of chapter 82.08 RCW, imposing a retail sales tax upon all sales within the state of Washington, and, further, are subject to enforcement by the state of its laws imposing criminal sanctions against the possession within this state of cigarettes without payment of the state taxes thereon, and affixation of the proper indicia to indicate such payment."

Leonard Tonasket's Brief to the Washington Supreme Court:

On appeal to the Washington Court, Leonard Tonasket, through assignments of error and argument, renewed his position that the judgment of the superior court imposing State excise taxes upon retail sales on trust land in the Colville Indian Reservation violates Article I, Section 8, clause 2 of the Constitution of the United States, 10 Stat. 172 (the Act of Congress Establishing the Territory of Washington), 25 Stat. 676 (the Enabling Act of the State of Washington), Article XXVI of the Washington State Constitution, 67 Stat. 588 (Public Law 83-280), 25 U.S.C. §261 *et seq.* (the Federal Indian Trader Statutes), 25 C.F.R. §251 *et seq.*, 24 Stat. 388 (the General Allotment Act of February 8, 1887), RCW 37.12.060, and the decisions of the Supreme Court in *United States v. Rickert,* 188 U.S. 432 (1903), *Squire v. Capoeman,* 351 U.S. 1 (1956), *Williams v. Lee,* 358 U.S. 217 (1959), *Warren Trading Post Company v. Arizona State Tax Commission,* 380 U.S. 685 (1965), federal Indian policy and the tribal sovereignty of the Colville Confederated Tribes.

The Opinion of the Washington Supreme Court:

The Washington Court viewed the case as raising only a single question. On page 609 of the Opinion the court stated:

"The single question on this appeal is whether the Colville Confederated Tribes of the State of Wash-

> ington and its members, by accepting the criminal and civil jurisdiction of the state, authorized by Public Law 83-280, ch. 505, 67 Stat. 588, have agreed to be bound by the particular statutes, the terms of which the plaintiff has admittedly violated."

A more thorough analysis of the opinion reveals that the Washington Supreme Court ruled upon three far more basic questions, namely:

1. May state excise taxes be validly imposed upon Indian commerce conducted within the boundaries of an Indian reservation, where failure to pay such taxes may result in levy and sale of real or personal property of the Indian taxpayer?

2. Does Public Law 83-280 impliedly repeal the Federal Indian Trader Statutes on Indian reservations which are subject to state civil and criminal jurisdiction?

3. Does Public Law 83-280 make all state laws except those expressly excluded by its provisions, applicable to Indians and Indian reservations which are subject to state civil and criminal jurisdiction?

The Washington Court answered the first question on page 613 of the Opinion:[28]

> ". . . there is expressed in the act no other limitation upon the right of the state to impose taxes upon and regulate the activities of an Indian under its general laws applicable to all citizens. Under the rules of interpretation which we have stated, there is no room to imply other limitations upon the operation of the general laws of the state."

The Washington Court answered the second question on page 618 of the Opinion:[29]

> "Here, the Congress has not only failed to preempt the field of Indian trading but it has authorized the

28. App. A, p. A-6.
29. App. A, p. A-10.

state to assume jurisdiction over such trading; the Colville tribe has requested that the state assume such jurisdiction, and the state has accepted the responsibility."

The Washington Court answered the third question on page 619 of the Opinion:[30]

"We are convinced that, when Congress enacted Public Law No. 83-280, authorizing the states to assume jurisdiction over Indian tribes and their members and providing that, after such assumption the civil laws of the state should apply to the Indians on the reservations the same as to others, it intended that the only exceptions to the operation of those laws should be those enumerated in the act. The plaintiff's business activities do not fall among those exceptions.

"The judgment is affirmed."

THE FEDERAL QUESTION IS SUBSTANTIAL

The Opinion of the Washington State Supreme Court has the effect of extinguishing at one stroke all federally-established exemptions for Indians and their property from the effect of state taxation. In this sweeping decision, the Washington Court has given an interpretation to Public Law 83-280 which ignores the plain language of the statute, ignores the policies promulgated by the federal government in pursuit of its trust responsibilities for the American Indian people, and misconstrues the effect of decisions of the Supreme Court preserving the plenary authority of Congress in the field of Indian commerce.

1. Imposition of State Excise Taxes on Indian Personal Property Is Prohibited by Public Law 83-280.

The State of Washington seeks to justify extension of State excise taxes to members of the Colville Confederated Tribes on the basis of Public Law 83-280, which it claims

30. App. A, p. A-11.

to be a Congressional grant of power to the states to subject Indians to all state laws except those expressly prohibited by the exclusion clauses of Public Law 83-280. While Leonard Tonasket does not contend that the cigarettes seized were trust property, he does contend that they are exempt from operation of state tax, for reasons which will be elaborated upon. However, the sweeping decision of the Washington Court has the effect of holding that *all Washington State excise tax laws* are applicable to Leonard Tonasket.

The Washington Court examined the exclusion provisions of Section 4 of Public Law 83-280 which read:

> "(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to adjudicate in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein."

and found no conflict between the State excise tax system and the federal limitation on state jurisdiction. The Washington Court then ruled that Public Law 83-280 has given the State broad authorization for imposition of all of its laws.

Of crucial importance, however, are the substantive provisions of State excise tax laws which provide remedies for default in payment of tax. RCW 82.32.210 provides in part:

> "If any tax, increase, or penalty or any portion

thereof is not paid within fifteen days after it becomes due, the tax commission may issue a warrant under its official seal directed to the sheriff of any county of the state, commanding him *to levy upon and sell the real and/or personal property of the taxpayer* found within his county, or so much thereof as may be necessary, for the payment of the amount of such warrant . . ." (Emphasis supplied)

RCW 82.32.240 provides in part:

"Any tax due and unpaid and all increases and penalties thereon, shall constitute a debt to the state and may be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to any and all other existing remedies.

"In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, involving any taxpayer, the claim of the state for said taxes and all increases and penalties thereon *shall be a lien upon all real and personal property of the taxpayer,* and the mere existence of such cases or conditions shall be sufficient to create such lien without any prior or subsequent action by the state . . ." (Emphasis supplied)

In *Stevens v. Commissioner of Internal Revenue,* ..... F.2d ..... (November 26, 1971), the Ninth Circuit Court of Appeals ruled that the federal government may not impose income tax on earnings derived from allotted trust lands owned by an Indian taxpayer. The decision is based upon the principle enunciated in *Squire v. Capoeman,* 351 U.S. 1 (1956).

Squire dealt with an attempt by the federal government to tax income from the sale of timber of allotted trust land granted to Indian taxpayers under the provisions of the General Allotment Act of 1887 (24 Stat. 388). The Supreme Court held that Section 5 of that Act, requiring con-

veyance of the lands to the Indian allottees in fee "free from all charge or encumbrances," and Section 6 of that Act, providing that when an Indian allottee receives a patent in fee simple, his former trust land "shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent," necessarily exempted from federal income tax all income derived from timber sales. The rationale of the Supreme Court was that if such income were subject to federal income tax, then nonpayment of the tax would result in a tax lien upon the trust land or a prior debt which would attach to the land upon its receipt by the Indian allottee in fee simple, either of which would violate the Act.

In *United States v. Rickert,* 188 U.S. 432 (1903), the State of South Dakota sought to impose its personal property tax on a cow, horses and two wagons supplied by the United States government to a tribal Indian. Holding that this direct tax would not lie, the Supreme Court held at page 442:

> "These suggestions entirely ignore the relation existing between the United States and the Indians. It is not a relation simply of contract . . . The government would not adequately discharge its duty to these people if it placed its engagements with them upon the basis merely of contract and failed to exercise any power it possessed to protect them in the possession of such improvements and personal property as were necessary to the enjoyment of the land held in trust for them. . . ."

Thus the Supreme Court has prohibited taxation of income derived from trust land and has prohibited taxation of personal property used in the economic development of trust land. Both decisions rest squarely upon the trust status of Indian land and the federal protection carefully

provided by Congress in Sections 5 and 6 of the General Allotment Act.

Here, nonpayment of state excise tax by Leonard Tonasket would, under state law, result in a tax lien upon his personal or real property at the discretion of state taxing authorities, or a prior debt which would attach to his personal or real property upon its receipt in fee simple. This is precisely what Congress has declared may not be done by a state under the exclusion provisions of Public Law 83-280, and this is precisely what the Supreme Court has declared may not be done in *Squire* and *Rickert*.

It is of interest to note that Washington state law itself imposes a restraint upon the state. RCW 82.26.040 provides:

> "The tax imposed by RCW 82.26.020 shall not apply with respect to any tobacco products which under the Constitution and laws of the United States may not be made the subject of taxation by this state."

The Opinion of the Washington Court, therefore, imposes on Indians in Washington the entire structure of state excise taxes and the laws governing their administration and imposition, which has the inherent effect of encumbering Indian real and personal trust property, in violation of the express prohibition of Public Law 83-280.

2. Congress Has Exclusive Jurisdiction of Trading on Indian Reservations.

Jurisdiction of the United States over Indian commerce is "exclusive and unfettered," *United States v. Forty-Three Gallons of Whiskey*, 93 U.S. 188 (1876), and includes "commerce with the individuals composing those tribes." *United States v. Holliday*, 70 U.S. 407 (1865). Pursuant to its constitutional authority, Congress has enacted comprehensive federal regulations over Indian commerce.

25 U.S.C. §261 provides:

> "The Commissioner of Indian Affairs shall have the *sole* power and authority to appoint traders to the Indian tribes and to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians." (Emphasis supplied)

Traders who are also full-blooded Indians are subject to federal regulation as well, *United States v. Parton*, 132 F.2d 886 (1943), but are exempt from the licensing requirement of 25 U.S.C. §264 which provides:

> "Any person *other than an Indian of the full blood* who shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without such license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of $500: . . ." (Emphasis supplied;

In *Warren Trading Post Company v. The Arizona State Tax Commission*, 380 U.S. 685 (1965), the Supreme Court noted that federal pre-emption of Indian commerce is predicated upon a philosophy of protecting Indians. In *Warren*, Mr. Justice Black stated at page 691:

> "We think the assessment and collection of this tax would to a substantial extent frustrate the evident congressional purpose of ensuring that no burden shall be imposed upon Indian traders for trading with Indians on reservations except as authorized by Acts of Congress or by valid regulations promulgated under those Acts. This state tax on gross income would put *financial burdens on appellant or the Indians with whom it deals* in addition to those Congress or the tribes have prescribed, and could thereby disturb and disarrange the statutory plan Congress set up in order to protect Indians against prices deemed unfair or unreasonable by the Indian Commisisoner." (Emphasis supplied)

The Supreme Court also made it crystal clear that federal pre-emption of Indian commerce is total and exclusive. On page 690 of *Warren*, Mr. Justice Black stated:

> "These apparently all-inclusive regulations and the statutes authorizing them would seem in themselves sufficient to show that *Congress has taken the business of Indian trading on reservations so fully in hand that no room remains for state laws imposing additional burdens upon traders.*" (Emphasis supplied)

The attempt by the Washington Court to distinguish away the holding of the Supreme Court in *Warren* on the ground that Arizona had not assumed jurisdiction over the Navajo reservation is specious. The Supreme Court acknowledged the existence of Public Law 83-280 jurisdiction in footnote 3 on page 687 of *Warren*, but nevertheless made no exception in its holding for states which have assumed jurisdiction pursuant to Public Law 83-280. The true basis for the *Warren* decision is the federal policy of total protection of Indian economy including both sales and purchases by Indians. Nothing in Public Law 83-280 purports to diminish that protection.

Leonard Tonasket is a full-blooded Indian and an enrolled member of the Colville Confederated Tribes doing business on trust land inside the Reservation. Application of State excise tax to his retail business is directly contrary to Article I, Section 8, clause 2 of the United States Constitution.

Further, Leonard Tonasket not only received federal sanction to trade on the Colville Indian Reservation, he received two loans of federally-restricted trust funds, approved by the Area Director of the Bureau of Indian Affairs

pursuant to 25 C.F.R. §91.12 *et seq.*,[31] for purchase of cigarette inventory and for construction of his store building. Accordingly, Leonard Tonasket is a federal Indian trader and application of State excise tax to his retail business in this case is directly contrary to 25 U.S.C. §261 *et seq.* and the *Warren* opinion.

3. Federal Policy Prohibits State Taxation of Indians and Their Property and Commercial Activity on Indian Reservations.

Land has always occupied a position of unique importance to the American Indian and remains the *sine qua non* of Indian existence as a people. Accordingly, the single most important protection for the Indian is the trust status imposed upon Indian land by the federal government and the long-established federal policy protecting its use. The federal policy is to protect the Indian trust land and personal property and their use by providing financial advantages and thus to encourage Indians to become economically independent. *Squire v. Capoeman, supra.*

The financial advantages provided by federal policy are attainable only by maximization of the value of trust land through economic development, and extend to personal property used in connection with trust land as well as the land itself. *United States v. Rickert, supra.* In today's society, it is as much the government's desire to foster successful business enterprises on Indian reservations as it is to encourage farming, ranching and fishing. *Makah v. Clallam County*, 73 Wn.2d 677, 686.

So paramount is the federal policy and so closely tied to Indian trust land that it was specifically provided for

31. App. E, p. E-6.

in Section 5 of the General Allotment Act, *supra*, and specifically preserved intact in Section 2(b) and Section 4(b) of Public Law 83-280 in the following language:

> "Nothing in this section . . . shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto . . ."

Since a central goal of the federal policy underlying trust status of Indian land is profitability of Indian enterprises, it follows that the measure of the federal policy's success is the degree of economic improvement in the Indian's position.[32] State tax upon commercial activity or personal property on the Colville Indian Reservation diminishes its profitability and directly interferes with the central policy goal.

In *Federal Land Bank v. Board of County Commissioners*, 368 U.S. 146 (1961), the Supreme Court voided a county personal property tax upon mineral rights owned by the Federal Land Bank. The decision turned upon the fact that the federal purpose of the Bank was to provide agricultural loans at low interest rates which was partially accomplished by distributing profits to its shareholder-borrowers, and any reduction of profits interfered with optimal achievement of the Bank's governmental functions.

The purpose underlying federal Indian policy is analogous since it depends directly upon maximum profitability of Indian trust land. Providing economic aid to Indians through prohibition of state taxation of property used on trust land or commercial activity on trust land is a federally protected governmental activity.

32. Comment, "Indian Taxation: Underlying Policies and Present Problems," 59 Cal. L. Rev. 1261, 1276.

4. Application of State Excise Tax Violates Tribal Sovereignty of the Colville Confederated Tribes.

While Congress has increasingly subjected Indian tribes to state laws, particularly through Public Law 83-280, one important limitation on state authority over Indian reservations remains: unless jurisdiction is expressly granted by the federal government, it is denied to the state in all matters that would interfere with a tribe's right of self-government.

This principle is stated in Federal Indian Law, Felix S. Cohen, U.S. Government Printing Office, 1966 Revision by Solicitor General, at page 443:

> "In its quasi-sovereign capacity and in the exercise of local self-government, it may exercise powers similar to those exercised by any state or municipal corporation in regulating the use and disposition of private property save insofar as it is restricted by specific statutes of Congress."

This principle has been repeatedly upheld by the Supreme Court. In *Warren*, the Supreme Court stated at page 687:

> "Certain state laws have been permitted to apply to activities on Indian reservations, where those laws are specifically authorized by acts of congress, or where they clearly do not interfere with federal policies concerning the reservations."

The inherent sovereign right of the Colville Confederated Tribes to regulate the use and disposition of property and commercial activity on the Colville Indian Reservation is preserved in Article V of the Tribal Constitution:

> "(e) To promulgate and enforce ordinances, subject to review by the Secretary of the Interior, which would provide for assessments or license fees upon non-members doing business within the Reservation,

or obtaining special rights or privileges, and the same may be applied to members of the Tribes provided such ordinances have been approved by a referendum of the Confederated Tribes."

The Tribes' sovereignty over commercial activity on the Reservation includes the power to levy taxes and a corollary immunity of such commercial activity from the myriad excise tax provisions of RCW Chapter 82.

In the face of this clear reservation of tribal sovereignty over commercial activity on the Reservation, Congress has not seen fit to grant specific taxing authority to the State of Washington. The opinion of the Washington Court violates the Tribes' sovereign power to tax commercial activity on the Reservation and interferes with the Tribes' right to determine a desirable tax level for such activity whenever the poverty status of their members is sufficiently alleviated to allow them to impose taxes.

5. Public Law 83-280 Does Not Authorize State Taxation of Indians and Their Property and Commercial Activity on the Colville Indian Reservation.

The Opinion of the Washington Court that Public Law 83-280 has authorized the states to assume jurisdiction over trading on Indian reservations is directly contrary to two well-established doctrines of law of the Supreme Court.

One doctrine holds that whenever possible, federal statutes are *not* to be deemed repealed by implication. In *Frost v. Wenie,* 157 U.S. 46, the Supreme Court held at page 58:

"It is well settled that repeals by implication are not to be favored. And where two statutes cover, in

> whole or in part, the same matter, and are not absolutely irreconcilable, the duty of the court—*no purpose to repeal being clearly expressed or indicated*—is, if possible, to give effect to both. In other words, it must not be supposed that the legislature intended by a later statute to repeal a prior one on the same subject, unless the last statute is so broad in its terms and so clear and explicit in its words as to show that it was intended to cover the whole subject, and, therefore, to displace the prior statute." (Emphasis supplied)

The second doctrine is the general rule that all treaties, statutes and laws are to be liberally construed to protect the rights of Indians and any ambiguities resolved in the Indians' favor. In *Alaska Pacific Fisheries v. United States*, 248 U.S. 78 (1918), the Supreme Court stated at page 89:

> ". . . statutes passed for the benefit of dependent Indian tribes or communities are to be liberally construed, doubtful expressions being resolved in favor of the Indians."

Again, in *Winters v. United States*, 207 U.S. 564 (1907), the Supreme Court held at page 576:

> "By rule of interpretation of agreements and treaties with the Indians, ambiguities occurring will be resolved from the standpoint of the Indians." (Emphasis supplied)

An analysis of Public Law 83-280 reveals no purpose, clearly expressed or indicated, to repeal or in any way abrogate the Federal Indian Trader Statutes or the tax immunity of Indians and their property and commercial activity on Indian reservations. Nor is the language of Public Law 83-280 so broad in its terms and so clear and explicit in its words as to show that it was intended to cover the subject of Indian trading or Indian tax immunity in any way whatsoever.

To the contrary, Public Law 83-280 was a "law and order" statute which merely authorized states to assume jurisdiction over civil disputes involving Indian litigants and to prosecute criminal activity occurring on Indian reservations. The Washington Court applied the legal maxim "expressio unius est exclusio alterius" to Public Law 83-280 and held that the exclusion clauses *impliedly* grant the State taxing power. This specious conclusion is readily demolished by applying "expressio unius" to Public Law 83-280. Section 2 repeals 18 U.S.C. 1152 (Assimilative Crimes Act) and 18 U.S.C. 1161 (Ten Major Crimes Act) on Indian reservations in which states assume jurisdiction. But no repeal is made of 18 U.S.C. 1161 which allows tribes to control reservation liquor sales and which was enacted the same day as Public Law 83-280! By "expressio unius" Public Law 83-280 continues 18 U.S.C. 1161 in effect and state law cannot apply to liquor sales ***even in reservations subject to state jurisdiction.***

Since 18 U.S.C. 1161 was not listed in the exclusion clauses of Public Law 83-280, "expressio unius" cannot possibly support the Washington Court's holding that all state laws apply except those specifically excluded by Public Law 83-280.

Just as 18 U.S.C. 1161 was unaffected by Public Law 83-280, so were the Federal Indian Trader Statutes and so was the federal Indian policy of protecting Indian trust land and its use from state taxation.

The only reasonable reading of the exclusion clauses of Public Law 83-280, in light of the doctrine that statutes be liberally construed to protect Indian rights with ambiguities resolved in the Indians' favor, is that those clauses indicate *only* what Public Law 83-280 does not do.

This conclusion is bolstered by *Kirkwood v. Arenas*, 243 F.2d 863 (9th Cir. 1957). In 59 Cal. L. Rev. 1261, *supra*, the author states at page 1267 that the *Kirkwood* case is "strong support" for the proposition that:

> "This clause clearly expresses Congress' intent that Public Law 280 should not expand state taxation of trust or restricted Indian real or personal property. Since the purpose of many Indian tax privileges is either to maximize the value of Indian property in fulfillment of the commitment to economic development or to recognize tribal sovereignty, *Public Law 280 should not be read to expand state power over other Indian-related tax exemptions; to do so would be inconsistent with federal policy.*" (Emphasis supplied)

An analysis of the legislative history of Public Law 83-280 reveals no reference to a grant of taxing power to states, nor any objection to the Act by Indians on that basis.

Finally, the Opinion of the Washington Court violates the specific holding of the Supreme Court in *Metlakatla Indian Community v. Egan*, 369 U.S. 46 (1962).

Metlakatla dealt with Indian fishing regulations promulgated by the Secretary of the Interior and in effect *prior to creation of the State of Alaska.* Alaska argued that the Statehood Act transferred control of all fishing to the state with no exception for Indian fishing. The Supreme Court noted that fishing rights given by regulation were *not* within the exclusion clauses of Public Law 83-280, but nevertheless ruled against Alaska and declined to apply the maxim "expressio unius" with respect to the extent of rights granted to states under Public Law 83-280.

The clear import of *Metlakatla* is that where Congress has pre-empted an area of Indian law by granting the

Secretary of the Interior power to regulate, a subsequent Congressional act imposing some general measure of state control over Indians does not repeal the pre-emption by implication. *Specific language of repeal is required* in consonance with the long-standing doctrines disfavoring repeal of federal statutes by implication and resolving all ambiguities in favor of Indians.

Thus the federal questions raised in this appeal are as substantial as (1) the basic right of the Colville Confederated Tribes to maintain their sovereign power of regulation and taxation of commercial activity on the Colville Indian Reservation, (2) the clearly discernible federal policy of encouraging Indians to become economically self-sufficient by developing successful business enterprises on trust land free from state taxation, and finally, (3) the question whether Public Law 83-280 repeals the Federal Indian Trader Statutes and constitutes a grant of authority to the states to impose tax laws and all other state laws on Indian Reservations except those specifically excluded by Public Law 83-280.

This case is appealed pursuant to 28 U.S.C. §1257 (2) from the highest court of the State of Washington, the Washington Supreme Court. The appeal is taken from the Washington Court's Remittitur which constitutes the final judgment and which became effective as of its date of entry, November 15, 1971. It is not subject to further correction or review since it stems from a decision *en banc*.

The decision of the Washington Court affirmed the decision of the superior court for Thurston County. Both courts

sustained application of State excise tax provisions of RCW Chapter 82 against the contentions of Leonard Tonasket that such application violated the United States Constitution, federal statutes, regulations and policy, decisions of the Supreme Court and the tribal sovereignty of the Colville Confederated Tribes. Both courts based their opinions upon federal grounds. The raising of the federal questions was timely and they were so presented as to qualify for an appeal pursuant to 25 U.S.C. §1257 (2). *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67 (1928).

CONCLUSION

This appeal raises the important federal questions:

1. May state excise taxes be validly imposed upon Indian commerce conducted within the boundaries of an Indian reservation, where failure to pay such taxes may result in levy and sale of real or personal property of the Indian taxpayer?

2. Does Public Law 83-280 impliedly repeal the Federal Indian Trader Statutes on Indian reservations which are subject to state civil and criminal jurisdiction?

3. Does Public Law 83-280 make all state laws except those expressly excluded by its provisions, applicable to Indians and Indian reservations which are subject to state civil and criminal jurisdiction?

The federal questions are substantial and for proper resolution and consideration require briefs on the merits and oral argument. Determination of these matters is necessary to maintain the plenary power of the United States

over Indian tribes and trust land on Indian reservations, to protect Indian tribes in the exercise of their governmental sovereignty and to protect their private property from state invasion.

Respectfully submitted,

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APPENDIX A

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

LEONARD TONASKET, *Appellant*, v. THE STATE OF WASHINGTON and THE SUPERVISOR OF THE TAX COMMISSION OF THE STATE OF WASHINGTON, *Respondents.*	No. 41640 En Banc Filed September 2, 1971

ROSELLINI, J.—The plaintiff is a Colville Indian of full blood, who owns a store on allotted land which is held in trust by the United States Government. His business is mainly that of selling cigarettes, and he sells approximately 400 cartons each day. His customers are Indians and non-Indians, but the majority are nonIndians.

The plaintiff has operated without the license required by RCW 19.91.120 and has not registered with the State of Washington as required by RCW 82.32.030. Furthermore, he has not complied with the requirements of RCW 82.24.050, which impose upon the cigarette retailer the duty of affixing tax stamps to cigarettes sold. The tax on 400 cartons of cigarettes would have been $440, so the state was losing at least $13,200 per month as a result of the plaintiff's operations.

In February of 1967, agents of the Washington State Department of Revenue entered the plaintiff's store, on reservation land,[1] and seized cigarettes which he had in stock. They placed the plaintiff under arrest and charged him by information with violation of the requirements of these statutes. Violations in each instance carry criminal penalties.

After the information was filed, the plaintiff brought this action for a declaratory judgment. In his complaint he declared that he was and had been in the business of selling

1. The part of the reservation on which the store is situated is within the city of Omak.

cigarettes without affixing the tax stamps required by state law. He further declared that it was his intention in the future to expand his mercantile operation and sell other items of merchandise, including but not limited to items of wearing apparel, and appliances. He declared that it was his intention not to collect the tax imposed by statute upon sales in the state of Washington. He also declared his intent to become a vendor of liquor by the bottle, but later abandoned this declaration.

The plaintiff asked the court to declare his right to do business with Indians and nonIndians free of the requirements of the state laws pertaining to the collecting and remitting of retail sales taxes. He further asked that the Washington State Department of Revenue be enjoined from harassing him by attempting to enforce these laws.

This relief was denied by the trial court and the action was dismissed, the court finding that the plaintiff is subject to the laws of the State of Washington in the operation of his retail cigarette business.

The single question on this appeal is whether the Colville Confederated Tribes of the State of Washington and its members, by accepting the criminal and civil jurisdiction of the state, authorized by Public Law 83-280, ch. 505, 67 Stat. 588, have agreed to be bound by the particular statutes, the terms of which the plaintiff has admittedly violated.

The answer lies in the scope of Public Law No. 83-280, authorizing states to assume criminal and civil jurisdiction of Indian tribes, and RCW 37.12, wherein this state declared that, upon receipt of a resolution from any tribe expressing its desire that its people be subject to such jurisdiction, the Governor shall issue a proclamation that such jurisdiction shall apply. The constitutionality of this method of assuming jurisdiction over Indian tribes has been tested in this court and has been sustained. *Makah Indian Tribe v. State*, 76 Wn.2d 485, 457 P.2d 590 (1969); *State v. Bertrand*, 61 Wn.2d 333, 378 P.2d 427 (1963); *State v. Paul*, 53 Wn.2d 789, 337 P.2d 33 (1959), *appeal dismissed*, 361 U.S. 898, 4 L. Ed.2d 155, 80 S. Ct. 203 (1959).

Public Law No. 83-280 (67 Stat. 588), which was enacted in 1953 and was in effect when this lawsuit arose,

provided, *inter alia*, that certain named states should have jurisdiction over offenses committed by or against Indians on or off the reservation to the same extent that those states had jurisdiction over offenses committed elsewhere within the state and that the criminal laws of such state should have the same force and effect within such Indian country as they had elsewhere with [sic] the state. (Section 2.) It further provided in section 4 that each of those listed states should have jurisdiction over civil causes of action between Indians or to which Indians were parties, which arose in Indian country, to the same extent that they had jurisdiction over other civil causes, and that

> those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State . . .

Section 2 contained the following limitation:

> (b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

Section 4, conferring civil jurisdiction, contained the following limitation:

> (b) Nothing in this section shall authorize the alie..ation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regu-

lation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

and this reservation:

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

It will be noted that these sections, by their terms, applied only to the states listed therein. However, in sections 6 and 7, the Congress authorized other states to assume criminal and civil jurisdiction.

In 1968, after this action was instituted, Congress amended section 7 by Public Law 90-284, Title IV, § 401, April 11, 1968, 82 Stat. 78, and added a requirement that before assumption of jurisdiction, a state must obtain the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected. This is the present law. *See* 25 U.S.C. § 1321 (1968). Although consent of the tribe was not required by federal law when Washington assumed jurisdiction over the Colville tribe, by its own statute it had made consent a prerequisite for the type of jurisdiction which it asserted over the plaintiff when it caused his arrest for the offenses involved in his sale of cigarettes.

RCW 37.12.021 provides:

Whenever the governor of this state shall receive from the majority of any tribe or the tribal council or other governing body, duly recognized by the Bureau of Indian Affairs, of any Indian tribe, community, band or group in this state a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction of the state of Washington to the full extent authorized by federal law, he shall issue within sixty days a proclamation to the effect that such jurisdiction shall apply to all Indians and all Indian territory, reservations, country, and lands of the Indian body involved to the same extent that this

> state exercises civil and criminal jurisdiction or both elsewhere within the state: *Provided*, That jurisdiction assumed pursuant to this section shall nevertheless be subject to the limitations set forth in RCW 37.12.060.

As the plaintiff admits in his brief, on January 13, 1965, the Colville Business Council issued resolution 1965-4, requesting the state to assume criminal and civil jurisdiction over the Colville tribe. On January 29, 1965, Governor Daniel J. Evans issued a proclamation assuming jurisdiction over the tribe.

Thus the state has been authorized to assume and has assumed jurisdiction over offenses and civil disputes occurring on Indian reservations and involving Indians, and the question is whether there is any limitation upon that jurisdiction other than those limitations set forth in Public Law No. 83-280. The specified restrictions upon state exercise of jurisdiction are designed to protect from state interference property held in trust for the Indians by the federal government or upon which there exists a restriction against alienation and the fishing, trapping and hunting rights of the Indian. The plaintiff does not contend that the action of the state in this case violates these limitations. Rather his position is that it was not the intent of Congress to authorize states to apply their revenue laws to business activities of Indians.

[1-3] The trial court was of the opinion that the authorization contained in Public Law No. 83-280 was plenary, with only the limitations expressed therein, and gave the states power to regulate the merchandising activities of Indians in the same way that they regulate such activities of their citizens generally, and to levy excise taxes upon them. We agree.

The plaintiff does not argue that the act is ambiguous, but the thrust of his argument seems to be that the Congress had in mind certain limitations upon the exercise of state jurisdiction which it did not set forth in the law which it enacted. It is well settled that the court will not read into an act provisions which the court conceives that the legislative body has unintentionally omitted. *Department of Labor & Indus. v. Cook*, 44 Wn.2d 671, 269 P.2d 962 (1954). Furthermore, we cannot assume that the legisla-

tive body had in mind exceptions which it did not express when we have before us an act in which certain exceptions are clearly and concisely set forth. To use the venerable phrase, expressio unius est exclusio alterius. As expressed in more contemporary language in *State v. Roadhs*, 71 Wn.2d 705, 430 P.2d 586 (1967), affirmative specification excludes implication.

Public Law No. 83-280 clearly forbids a state to tax property held in trust for Indians over whom it assumes jurisdiction or to take other specified actions in relation to that property. The section protecting fishing, trapping and hunting rights would undoubtedly prohibit a tax or regulation which operated to deprive the Indian of those rights. But there is expressed in the act no other limitation upon the right of the state to impose taxes upon and regulate the activities of an Indian under its general laws applicable to all citizens. Under the rules of interpretation which we have stated, there is no room to imply other limitations upon the operation of the general laws of the state.

If there were any doubt in our minds that it was the intent of Congress to make all the laws of the state, with their benefits and their burdens, applicable to the consenting tribes and their members (with exceptions noted), that doubt would be resolved by an examination of the committee report upon which the Congress acted when it passed Public Law No. 83-280. We think the purpose is manifest in the language used in the act, giving it its ordinary and commonly understood meaning, and the record shows that the purpose expressed was indeed the purpose intended.

In Senate Report No. 699, which repeats in substance House Report No. 848 on House Resolution 1063 (which became Public Law No. 83-280), the following statement regarding the act and certain companion legislation appears:

> Your Committee on Interior and Insular Affairs, through its Indian Affairs Subcommittee, and with the continuing cooperation of the Secretary of the Interior and the Indian Bureau, has, during this session, operated in five major areas of legislation affecting the Indians. This legislation, whether before the House or presently under committee consideration, has two coordinate aims: First, withdrawal of Federal responsi-

> bility for Indian affairs wherever practicable; and second, termination of the subjection of Indians to Federal laws applicable to Indians as such.

U.S.C. Cong. & Admin. News 2409 (1953).

The report drew attention to the fact that, owing to the lack of state jurisdiction to prosecute offenses and limitations upon the federal jurisdiction, as a practical matter enforcement of law within the reservation had been left largely to the Indian groups themselves, and that Indian tribes often are not sufficiently organized to preserve law and order on the reservation. The report said:

> [C]onsequently, there has been created a hiatus in law-enforcement authority that could best be remedied by conferring criminal jurisdiction on States indicating an ability and willingness to accept such responsibility.

U.S.C. Cong. & Admin. News 2412 (1953).

Upon the question of civil jurisdiction, the report stated:

> Similarly, the Indians of several States have reached a stage of acculturation and development that makes desirable extension of State civil jurisdiction to the Indian country within their borders. Permitting the State courts to adjudicate civil controversies arising on Indian reservations, and to extend to those reservations the substantive civil laws of the respective States insofar as those laws are of general application to private persons or private property, is deemed desirable.
>
> After consideration of the proposed legislation, the committee concluded that: any legislation in this area should be on a general basis, making provision for all affected States to come within its terms; that the attitude of the various States and the Indian groups within those States on the jurisdiction transfer question should be heavily weighed before effecting transfer; and that any recommended legislation should retain application of Indian tribal customs and ordinances to civil transactions among the Indians, insofar as these customs or ordinances are not inconsistent with applicable State laws.

U.S.C. Cong. & Admin. News 2412 (1953).

We cannot conceive that it was the intent of Congress to extend to Indians only the protection and benefits of state

laws, with none of their attendant duties and responsibilities, and we find no such intention expressed in the statute. True, there are certain immunities and protections afforded the Indians in the enjoyment of their trust properties and their rights of fishing, trapping and hunting. These place the Indian in a position of advantage not shared by other citizens.

This court has been liberal in its interpretation of the provision forbidding states which assume jurisdiction from placing burdens upon trust property. In *Snohomish County v. Seattle Disposal Co.*, 70 Wn.2d 668, 425 P.2d 22 (1967), we held that a zoning restriction could not be given effect to restrict the use of property upon which there was a restraint against alienation, even though that property had been leased to nonIndians.

The Supreme Court of the United States has not gone so far in protecting allotted and restricted lands from encumbrance. In *Oklahoma Tax Comm'n v. Texas Co.*, 336 U.S. 342, 93 L. Ed. 721, 69 S. Ct. 561 (1949), it held that the interests of nonIndian lessees in such lands were subject to state gross production taxes on petroleum produced from such lands, overruling a number of cases which had held to the contrary and reaffirming *Thomas v. Gay*, 169 U.S. 264, 42 L. Ed. 740, 18 S. Ct. 340 (1898), wherein the court had sustained a state tax on cattle grazing on tribal lands leased from Indians by the nonIndian owner of the cattle. The court found that any burden upon the land resulting from such a tax was too remote to justify a rule which would aid the lessee in escaping a nondiscriminatory tax to which he would otherwise be subject and thus to thwart the taxing power of the state.[2]

The court quoted with approval the following excerpt from *Helvering v. Mountain Producers Corp.*, 303 U.S. 376, 82 L. Ed. 907, 58 S. Ct. 623 (1938), wherein it noted the supposed truism that the power to tax is the power to

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2. We dealt with a question concerning the imposition of the tax on wholesalers in *Makah Indian Tribe v. Tax Comm'n*, 72 Wn.2d 613, 434 P.2d 580 (1967), and reached a result in harmony with that of the United States Supreme Court in *Oklahoma Tax Comm'n v. Texas Co.*, 336 U.S. 342, 93 L.Ed. 721, 69 S.Ct. 561 (1949). Note that there was no showing in that case that the Makahs submitted to the jurisdiction of the state under RCW 37.12.021, as authorized by Public Law No. 83-280.

destroy,[3] and said:

> "In numerous decisions we have had occasion to declare the competing principle, buttressed by the most cogent considerations, that the power to tax should not be crippled 'by extending the constitutional exemption from taxation to those subjects which fall within the general application of nondiscriminatory laws, and where no direct burden is laid upon the governmental instrumentality and there is only remote, if any, influence upon the exercise of the functions of government.' *Willcuts v. Bunn*, 282 U.S. 216, 225, and illustrations there cited." 303 U.S. at 385.

336 U.S. at 361.

This opinion of the United States Supreme Court would indicate that that court now entertains a liberal view with respect to the taxing power of states, but the plaintiff calls our attention to *Warren Trading Post Co. v. Arizona Tax Comm'n*, 380 U.S. 685, 14 L. Ed. 2d 165, 85 S. Ct. 1242 (1965), wherein the court held that the State of Arizona could not impose an excise tax upon a federally-licensed Indian trader based upon the gross proceeds of sales upon the reservation of the Navajo Indians. The plaintiff relies heavily upon this case and contends that it stands for the proposition that Congress has preempted the field of Indian trading, leaving no room for state regulation or imposition of state taxes.

The facts of that case, however, are so different in material aspects from the facts of this case that the law enunciated therein has no application here. There, the company upon which the tax was sought to be imposed had been licensed by the Commissioner of Indian Affairs to trade with the Indians. Here, the plaintiff holds no such license.[4] Furthermore, admittedly, the bulk of his trade is with non-Indians. Thus, the state tax does not interfere with a federal licensing policy as it did in the Arizona case.

3. The opinion recalls the words of Mr. Justice Holmes in *Panhandle Oil Co. v. Mississippi ex rel. Knox*, 277 U.S. 218, 72 L.Ed. 857, 48 S.Ct. 451, 56 A.L.R. 583 (1928), "The power to tax is not the power to destroy while this court sits."

4. We are advised by counsel for the Washington State Department of Revenue that the Commissioner has never exercised the power given by 25 U.S.C. § 261 (1876) to license Indian traders in this state, and the plaintiff has not questioned the accuracy of his statement.

However, we do not rely upon this distinction as the basis for our decision. Rather, the most important distinguishing feature is that the Navajo Indians of Arizona had not submitted themselves to the jurisdiction of the state, and the state had not assumed such jurisdiction. The court said:

> Congress has, since the creation of the Navajo Reservation nearly a century ago, left the Indians on it largely free to run the reservation and its affairs without state control, a policy which has automatically relieved Arizona of all burdens for carrying on those same responsibilities.

380 U.S. at 690.

Observing that Congress had evidenced a purpose of ensuring that no burden should be imposed upon Indian traders for trading with Indians on reservations except as authorized by acts of Congress or by valid regulations promulgated under those acts, the court said that the tax in question would put financial burdens upon the trader or the Indians with whom he traded in addition to those Congress or the tribes had prescribed, and could thereby disturb the statutory plan for insuring that the prices paid by the Indians were fair. The court continued:

> And since federal legislation has left the State with no duties or responsibilities respecting the reservation Indians, we cannot believe that Congress intended to leave to the State the privilege of levying this tax.

(Footnote omitted.) 380 U.S. at 691.

Implicit in this language is a declaration that, had the Congress placed duties upon the state or authorized it to assume duties with respect to the Indians and had the state assumed such duties, a different result would have been indicated.

Here, the Congress has not only failed to preempt the field of Indian trading but it has authorized the state to assume jurisdiction over such trading; the Colville tribe has requested that the state assume such jurisdiction, and the state has accepted the responsibility. Unlike Arizona, the State of Washington does indeed have duties to perform for the Colville Indians. These Indians now enjoy all the rights and privileges which are enjoyed by citizens generally. They have the protection of all the state's criminal laws and the services of its courts and all of the benefits

to which other citizens similarly situated are entitled under its civil laws.

It was the purpose of the Congress in enacting Public Law No. 83-280 to release from federal supervision and protection those Indians who wish to be released, except in the areas expressly reserved in the act, and to subject them instead to the jurisdiction of the states. It was the evident purpose of Congress to facilitate the emergence of the Indian from his inferior status as a protected (but nevertheless disadvantaged) ward of the federal government to the status of full citizen, both of the state in which he resides and of the United States, with all of the privileges and responsibilities of such status.

It is suggested by the plaintiff that the regulating and taxing of his sales of cigarettes by the state interferes with tribal government. There is no showing of any actual conflict between the state laws and tribal laws, but if there were such a conflict, the state law would, under Public Law No. 83-280, be controlling. That act provides that only such tribal customs and ordinances as are not in conflict with state laws are to be preserved.

The plaintiff in this case has entered into the commercial life of the community in which he lives. He sells a product manufactured by others, the sale of which the state has found it desirable and necessary to regulate. The plaintiff does not question the right of the state to impose a tax upon the sale of cigarettes generally. But he contends that he should be exempt from the duty of collecting and remitting that tax and should thus enjoy a competitive advantage over nonIndian sellers of cigarettes. He has cited no authority which supports this proposition.

We are convinced that, when Congress enacted Public Law No. 83-280, authorizing the states to assume jurisdiction over Indian tribes and their members and providing that, after such assumption the civil laws of the state should apply to the Indians on the reservations the same as to others, it intended that the only exceptions to the operation of those laws should be those enumerated in the act. The plaintiff's business activities do not fall among those exceptions.

The judgment is affirmed.

HAMILTON, C.J., FINLEY, HALE, NEILL, SHARP, and WRIGHT, JJ., and RYAN and MIFFLIN, JJ. Pro Tem., concur.

APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

LEONARD TONASKET, *Plaintiff*, v. THE STATE OF WASHINGTON and THE SUPERVISOR OF THE TAX COMMISSION OF THE STATE OF WASHINGTON, *Defendants.*	No. 38791 Memorandum Opinion

This matter came on for trial with the Plaintiff seeking a declaratory judgment as against the state of Washington and the Tax Commission and seeking to enjoin the state of Washington from interferring [sic] with the Plaintiff in the selling of cigarettes at retail. The Plaintiff was represented by his attorney, Mr. B. E. Kohls and the defendant was represented by its attorney, Mr. J. Richard Duggan, Assistant Attorney General. After taking testimony and hearing the arguments of counsel, and receiving briefs of the parties, the Court took the matter under advisement. Subsequently, it was called to the attention of the Court that an opinion has been rendered by the supreme court in the case of the *Makah Indian Tribe v. Clallam County*, 73 Wn.2d 683. The Court called this matter to the attention of counsel as to whether they wished to submit additional briefs. Additional breifs [sic] were submitted. The Court has considered the testimony, the arguments and the briefs.

The Court does not feel that there is any necessity of reiterating the facts in this case as there appears to be no conflict or dispute as to the facts and the Court is satisfied that the Plaintiff is a member of the Colville Confederated Tribes. The Plaintiff has gone to great lengths in arguing and submitting his briefs to cover the law relating to taxation of Indians on Indian reservations and cites the leading case of *Warren Trading Post Co. v. Arizona Tax Commission*, 1965 Arizona, 85 S. Ct. 1242, 380 U. S. 685, 14 L. ed [sic] 2d 165, in which the Supreme Court of the United States held that under the commerce clause of the United

States Constitution, being Article I, Section 8, Clause 3, Congress has taken the business of Indian trading on reservations so fully in hand that no room remains for state laws imposing additional burdens on traders in the form of taxes. The Plaintiff further cites the case of *Makah Indian Tribe v. Tax Commission*, 72 Wn. 2d 608 and also *Makah Indian Tribe v. Clallam County*, 73 Wn. 2d 683 as additional authorities.

The Court is familiar with *Makah Indian Tribe v. Tax Commission, supra,* in that this Court was the judge originally hearing that case.

While these cases undoubtedly point out the law governing in those situations, there is one additional fact found here that must be taken into consideration by the Court and that is that the Colville Confederated Tribes of the state of Washington have accepted the civil and criminal jurisdiction of the state of Washington under the provisions of Chapter 37.12 RCW and under the provisions of Public Law 280, 83rd Congress and the actual question for the Court to determine, is whether the United States government under the provisions of Public Law 280 of the 83rd Congress has relinquished to the states the right to impose the excise taxes as to the sale of cigarettes and has taken away from the Indians protection granted them under the *Warren Trading Post Co. v. Arizona Tax Commission* case, *supra.*

In examining the legislation of the state of Washington, implementing Public Law 280 of the 83rd Congress, the Court finds that in RCW 37.12.060 limitations on the application of the acceptance of civil and criminal jurisdiction of the Indian tribes were laid out in detail and actually is verbatim the limitations set down by Public Law 280 of the 83rd Congress and the Court doesn't find in these statutes any direct limitation on the imposition of an excise tax as complained of herein. RCW 37.12.060 provides that there shall be no taxation of any real or personal property, including water rights and tide lands, belonging to any Indian or any Indian tribe, band or community that is held in trust by the United States or subject to restriction against alienation imposed by the United States. The Court is satisfied, as argued by the Defendant, that if it was not intended to transfer the power to tax to the state, there

would have been no necessity of mentioning the term "taxation" within the exclusionary provision of RCW 37.12.060 and Public Law 280, *supra*. The Court is of the opinion that the taxation which had been imposed by the state in this case, has not been limited by the provisions of RCW 37.12.060 or by 28 USCA 1360 in sub-section (b) thereof.

In conclusion, the Court is of the opinion that, while the law as cited by the Plaintiff is controlling as to those Indian tribes which have not allowed the assumption of criminal and civil jurisdiction by the state of Washington, in those cases where civil and criminal jurisdiction has been accepted by the state of Washington, the members of the Indian tribes therein are subject to the excise taxes complained of by the Plaintiff herein and the state may further enforce the criminal laws of the state relating to the possession of unstamped cigarettes.

The Plaintiff has further asked for declaratory judgment enjoining the state and requesting a restraining order against the state interferring [sic] with the possible potential sale by the Plaintiff of intoxicating liquor and the Court sees no reason why the opinion of the Court should not apply equally as well to the sale of intoxicating liquor.

The Court will sign Findings of Fact, Conclusions of Law and Judgment in accordance with the terms of this memorandum opinion.

DATED this 7th day of October, 1968.

s/ HEWITT A. HENRY
Hewitt A. Henry, Judge

APPENDIX C

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON
THURSTON COUNTY NO. 38791

LEONARD TONASKET, *Appellant,* v. THE STATE OF WASHINGTON and THE SUPERVISOR OF THE TAX COMMISSION OF THE STATE OF WASHINGTON, *Respondents.*	REMITTITUR No. 41640 Thurston County No. 38791

The State of Washington to: The Superior Court of the State of Washington in and for Thurston County

This is to certify that the opinion of the Supreme Court of the State of Washington filed on September 2, 1971, became the final judgment of this court in the above entitled case on November 15, 1971. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows:

Two hundred eighty-five and 50/100 ($285.50) in favor of respondent and against appellant and against United Pacific Insurance Co.

The Petition for Rehearing was denied by order dated November 15, 1971.

cc: Ziontz, Pirtle & Fulle
Mr. Robert L. Pirtle and Mr. Mason D. Morisset
Honorable Slade Gorton, Attorney General
Mr. Michael B. Hansen, Asst.
Mr. Timothy R. Malone, Asst.
Court Reporter

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed the seal of said Court at Olympia, this 15th day of November, A.D. 1971.

WILLIAM M. LOWRY
Clerk of the Supreme Court, State of Washington.

APPENDIX D

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

LEONARD TONASKET, *Appellant*, v. THE STATE OF WASHINGTON and THE SUPERVISOR OF THE TAX COMMISSION OF THE STATE OF WASHINGTON, *Appellees.*	No. 41640 NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

1. Notice is hereby given that Leonard Tonasket, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Washington entered November 15, 1971 affirming the judgment of the Superior Court for Thurston County, Washington, Cause No. 38791, signed and entered by the Honorable Hewitt A. Henry on January 21, 1969.

This appeal is taken pursuant to 28 U.S.C. §1257.

2. The Clerk will please prepare and certify a transcript of the entire record in this action, including appellant's Supplemental Statement of Additional Authorities, Brief and Petition in Support Thereof, for Rehearing, for transmission to the Clerk of the Supreme Court of the United States.

3. The questions presented by this appeal are:

(a) Whether Titles 82.24, 82.32 and 19.91 of the Revised Code of Washington providing for licensing and taxation of retail cigarette sellers and sales are repugnant to and in conflict with the Federal Indian Trader Act, 25 U.S.C. §261, *et seq.*

(b) Whether the authority granted to states by Public Law 83-280, Ch. 505, 67 Stat. 588 to allow assumption of criminal and civil jurisdiction over Indian reservations repeals by implication all

previous federal statutes, laws and treaties governing Indian affairs.

(c) Whether in light of applicable federal statutes and laws Public Law 83-280, Ch. 505, 67 Stat. 588, extends to the State of Washington power to tax and regulate retail sales on an Indian reservation.

DATED this 8th day of December, 1971.

ZIONTZ, PIRTLE & MORISSET
ROBERT L. PIRTLE
MASON D. MORISSET

By: s/ROBERT L. PIRTLE
Robert L. Pirtle
Attorneys for Leonard Tonasket, Appellant.

PROOF OF SERVICE

I, PAMELA D. CLERICO, a secretary in the office of Ziontz, Pirtle and Morisset, depose and say that on the 8th day of December, 1971, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on the appellees herein: STATE OF WASHINGTON and the SUPERVISOR OF THE TAX COMMISSION OF THE STATE OF WASHINGTON, by depositing copy thereof addressed to the Attorney General of the State of Washington, Temple of Justice, Olympia, Washington (98501), attorney of record for appellees, in a United States Post Office mailbox in Seattle, King County, Washington, with first-class postage prepaid thereon.

s/ PAMELA D. CLERICO
Pamela D. Clerico

SUBSCRIBED and SWORN to before me this 8th day of December, 1971.

s/ ROBERT L. PIRTLE
Robert L. Pirtle
Notary Public in and for the State of Washington, residing at Bainbridge Island.

APPENDIX E

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

United States Constitutional Provision:

United States Constitution, Art. I §8, cl. 2

"The Congress shall have Power . . . to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes;"

United States Statutes:

25 U.S.C. §§261-264:

§261

The Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes and to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians. Aug. 15, 1876, c. 289, §5, 19 Stat. 200.

§262

Any person desiring to trade with the Indians on any Indian reservation shall, upon establishing the fact, to the satisfaction of the Commissioner of Indian Affairs, that he is a proper person to engage in such trade, be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians. Mar. 3, 1901, c. 832, §1, 31 Stat. 1066; Mar. 3, 1903, c. 994, §10, 32 Stat. 1009.

§263

The President is authorized, whenever in his opinion the public interest may require the same, to prohibit the introduction of goods, or of any particular article, into the country belonging to any Indian tribe, and to direct all licenses to trade with such tribe to be revoked, and all applications therefor to be rejected. No trader to any other tribe shall, so long as such prohibition may continue, trade with any Indians of or for the tribe against which such prohibition is issued. R.S. §2132.

§264

Any person other than an Indian of the full blood who shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without such license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of $500: *Provided*, That this section shall not apply to any person residing among or trading with the Choctaws, Cherokees, Chickasaws, Creeks, or Seminoles, commonly called the Five Civilized Tribes, residing in said Indian country, and belonging to the Union Agency therein: *And provided further*, That no white person, shall be employed as a clerk by any Indian trader, except such as trade with said Five Civilized Tribes, unless first licensed so to do by the Commission of Indian Affairs, under and in conformity to regulations to be established by the Secretary of the Interior. R.S. 2133; July 31, 1882, c. 360, 22 Stat. 179.

Public Law 83-280, 67 Stat. 588 (1953).

AN ACT

To confer jurisdiction on the States of California, Minnesota, Nebraska, Oregon, and Wisconsin, with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 53 of title 18, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1151 of such title the following new item:

"1162. State jurisdiction over offenses committed by or against Indians in the Indian country."

Sec. 2, Title 18, United States Code, is hereby amended by inserting in chapter 53 thereof immediately after section 1161 a new section, to be designated as section 1162, as follows:

"§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

"(a) Each of the States listed in the following table shall have jurisdiction over offenses committed by or

against Indians in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over offenses committed elsewhere within the State, and the criminal laws of such State, shall have the same force and effect within such Indian country as they have elsewhere within the State:

"State of	Indian Country Affected
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State, except the Menominee Reservation

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

"(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section."

Sec. 3 Chapter 85 of title 28, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1331 of such title the following new item:

"1360. State civil jurisdiction in actions to which Indians are parties."

Sec. 4. Title 28, United States Code, is hereby amended by inserting in chapter 85 thereof immediately after section 1359 a new section, to be designated as section 1360, as follows:

"§1360. State civil jurisdiction in action to which Indians are parties

"(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

"State of	Indian Country Affected
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State, except the Menominee Reservation

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or com-

munity in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section."

Sec. 5. Section 1 of the Act of October 5, 1949 (63 Stat. 705, ch. 604), is hereby repealed, but such repeal shall not affect any proceedings heretofore instituted under that section.

Sec. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their state constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their state constitution or statutes as the case may be.

Sec. 7. The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof.

Approved August 15, 1953.

Federal Regulations:

25 C.F.R. §251, §253:

§251.1 Sole power to appoint.

The Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes. Any person desiring to trade with the Indians on any reservation may, upon establishing the fact, to the satisfaction of the Commissioner of Indian Affairs, that he is a proper person to engage in such trade, be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe.

§251.3 Forfeiture of goods.

Any person other than an Indian of the full blood who shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without a license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of $500: *Provided*, That this section shall not apply to any person residing among or trading with the Choctaws, Cherokee, Chickasaws, Creeks, or Seminoles, commonly called the Five Civilized Tribes: *And provided further*, That no white person shall be employed as a clerk by any Indian trader, except as such trade with said Five Civilized Tribes, unless first authorized so to do by the Commissioner of Indian Affairs. (R.S. 2133, as amended; 25 U.S.C. 264.)

25 C.F.R. §91.12, 91.13:

§91.12 Tribal funds.

(a) Tribal funds may be advanced to corporations and unincorporated tribes and bands, when authorized by Congress, upon request of the governing body and approval by the Commissioner, for the establishment of enterprises and for relending in accordance with paragraphs (b) and (c) of this section and § 91.13. No interest shall be paid to the United States on such funds.

(b) Support loans may be made to old, indigent, or disabled members, and loans may be made for burial expenses of members, when there is reasonable assurance that the loans will be repaid. Interest may be waived on such loans.

(c) Individuals need not be of at least one-quarter degree of Indian blood in order to receive loans of tribal funds, but must be members of the corporation, tribe, or band to which the funds belong.

(d) Failure of a corporation or unincorporated tribe or band to use tribal funds advanced under authority of paragraph (a) of this section in accordance with the regulations and the purposes for which requested, shall be grounds for any one or all of the following steps to be taken by the Commissioner:

(1) Discontinue further advance of funds requested.

(2) Require that the entire amount advanced be returned to the Treasury.

(3) Prevent further disbursement of tribal funds under the control of the corporation, tribe, or band.

(4) Withdraw any unobligated funds from the corporation, tribe, or band and deposit the same in the Treasury.

(5) Require that all repayments on loans made by the corporation, tribe, or band, be used to replace funds advanced to the corporation, tribe, or band from the Treasury.

(6) In the case of enterprises operated with tribal funds, to liquidate or operate or arrange for the operation of the enterprise, until all tribal funds advanced to the corporation, tribe, or band have been replaced in the Treasury, or until the Commissioner has received acceptable assurance that the funds will be replaced, or that the enterprise will be operated in a manner satisfactory to him.

§91.13 Relending by borrower.

(a) Funds loaned by the United States to a corporation, tribe, band, or credit association, may be reloaned by it, with the approval of the Commissioner or his authorized representative, but the Commissioner may authorize such lenders to approve applications for particular types of loans up to a specified amount.

(b) Such loans shall be secured by such securities as the lender and the approving officer may require. Individually owned trust or restricted land may be mortgaged for such loans in accordance with § 121.52 of this chapter. All securing documents shall be filed or recorded in accordance with State or Territorial law.

(c) Unless otherwise authorized by the Commissioner in the case of particular loans, title to property purchased with such loans received from such relending organizations shall be taken in the name of the borrower.

Executive Order:

Executive Order Dated July 2, 1872

EXECUTIVE MANSION
Washington, July 2, 1872

It is hereby ordered that the tract of country referred to in the within letter of the Commissioner of Indian Affairs as having been set apart for the Indians therein named by Executive order of April 9, 1872, be restored to the public domain, and that in lieu thereof the country bounded on the east and south by the Columbia River on the west by the Okanogan River, and on the north by the British possessions, be, and the same is hereby, set apart as a reservation for said Indians, and for such other Indians as the Department of the Interior may see fit to locate thereon.

U. S. GRANT

State Statutes:

Revised Code of Washington:

82.24.050 Duty of retailer

Every retailer shall, within a reasonable time after receipt of any of the articles taxed herein, cause the same to have the requisite denomination and amount of stamps affixed to represent the tax imposed herein: *Provided*, That those articles to which stamps have been properly affixed by a wholesaler or another retailer may be retained by any retailer, and that those articles intended for sale to qualified purchasers may be retained by federal instrumentalities and Indian tribal organizations, without affixing the stamps required by this chapter. [Amended by Laws 1st Ex Sess 1969 ch 214 § 2.]

82.24.110 Other offenses—Penalty. Each of the following acts is a gross misdemeanor and punishable as such:

(1) To sell, except as a registered wholesaler or retailer engaged in interstate commerce as to the article being taxed herein, without the stamp first being affixed;

(2) To use or have in possession knowingly or intentionally any forged or counterfeit stamps;

(3) For any person other than the tax commission or its duly authorized agent to sell any stamps not affixed to any of the articles taxed herein whether such stamps are genuine or counterfeit;

(4) To violate any of the provisions of this chapter;

(5) To violate any lawful rule or regulation made and published by the tax commission;

(6) To use any stamps more than once;

(7) To refuse to allow the tax commission or any duly authorized agent thereof, on demand, to make full inspection of any place of business where any of the articles herein taxed are sold or otherwise hinder or prevent such inspection;

(8) For any retailer, except one permitted to maintain an unstamped stock to engage in interstate business as provided herein, to have in possession in any place of business any of the articles herein taxed, unless the same have the proper stamps attached;

(9) For any person to make, use, or present or exhibit to the tax commission or any duly authorized agent thereof, any invoice for any of the articles herein taxed which bears an untrue date or falsely states the nature or quantity of the goods therein invoiced;

(10) For any wholesaler or retailer or his agents or employees to fail to produce on demand of the tax commission all invoices of all the articles herein taxed or stamps bought by him or received in his place of business within five years prior to such demand unless he can show by satisfactory proof that the non-production of the invoices was due to causes beyond his control;

(11) For any person to receive in this state any shipment of any of the articles taxed herein, when the same are not stamped, for the purpose of avoiding payment of tax. It is presumed that persons other than dealers who purchase or receive shipments of unstamped cigarettes do so to avoid payment of the tax imposed herein.

All agents, employees, and others who aid, abet, or otherwise participate in any way in the violation of the provisions of this chapter or in any of the offenses herein described shall be guilty and punishable as principals, to the same extent as any wholesaler or retailer violating the provisions thereof.

82.32.030 Registration certificates. If any person engages in any business or performs any act upon which a tax is imposed by the preceding chapters, he shall, whether taxable or not, under such rules and regulations as the commission shall prescribe, apply for and obtain from the commission, upon payment of a fee of one dollar, a registration certificate. Such registration certificate shall be personal and nontransferable and shall be valid as long as the taxpayer continues in business and pays the tax accrued to the state. In case business is transacted at two or more separate places by one taxpayer, a separate registration certificate for each place at which business is transacted with the public shall be required, but, for such additional certificates no fee shall be required. Each certificate shall be numbered and shall show the name, residence, and place and character of business of the taxpayer and such other information as the tax commission deems necessary and shall be posted in a conspicuous place at the place of business for which it is issued. Where a place of business of the taxpayer is changed, the taxpayer must return to the commission the existing certificate, and a new certificate will be issued for the new place of business free of charge. No person shall engage in any business taxable hereunder without being registered in compliance with the provisions of this section, except that the commission, by general regulation, may provide for the issuance of certificates of registration to temporary places of business without requiring the payment of any fee.

82.32.210 Tax warrant—Levy upon property—Revocation of certificate of registration

If any tax, increase, or penalty or any portion thereof is not paid within fifteen days after it becomes due, the tax commission may issue a warrant under its official seal directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and/or personal property of the taxpayer found within his county, or so much thereof as may be necessary, for the payment of the amount of such warrant, together with interest thereon at the rate of one percent of the amount of such warrant for each thirty days or portion thereof after the date of such warrant, plus the cost of executing the warrant, and return the warrant to the commission and pay to it the money collected by virtue thereof within sixty

days after the receipt of the warrant. If, however, the commission believes that a taxpayer is about to cease business, leave the state, or remove or dissipate the assets out of which taxes or penalties might be satisfied and that any tax or penalty will not be paid when due, it may declare the tax or penalty to be immediately due and payable and may issue a warrant immediately.

If any warrant issued under this chapter is not paid within thirty days after it has been filed with the clerk of the superior court, or if any taxpayer shall, for three consecutive reporting periods, be delinquent in the transmission to the commission of retail sales tax collected by him, the tax commission may by order issued under its official seal, revoke the certificate of registration of the taxpayer against whom the warrant was issued, and, if such order is entered, a copy thereof shall be posted in a conspicuous place at the main entrance to the taxpayer's place of business and shall remain posted until such time as the warrant has been paid. Any certificate so revoked shall not be reinstated, nor shall a new certificate of registration be issued to the taxpayer, until the amount due on the warrant has been paid, or provisions for payment satisfactory to the commission have been entered, and until the taxpayer has deposited with the commission such security for payment of any taxes, increases, and penalties, due or which may become due in an amount and under such terms and conditions as the commission may require, but the amount of the security shall not be greater than one-half the estimated average annual liability of the taxpayer. [Amended by Laws 1st Ex Sess 1967 ch 89 §3, effective June 1, 1967.]

82.32.240 Tax constitutes debt — Priority of Lien. Any tax due and unpaid and all increases and penalties thereon, shall constitute a debt to the state and may be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to any and all other existing remedies.

In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, involving any taxpayer, the claim of the state for said taxes and all increases and penalties thereon shall be a lien upon all real and personal property of the taxpayer, and the mere existence of

such cases or conditions shall be sufficient to create such lien without any prior or subsequent action by the state, and in all such cases it shall be the duty of all administrators, executors, guardians, receivers, trustees in bankruptcy or assignees for the benefit of creditors, to notify the tax commission of such administration, receivership or assignment within thirty days from the date of their appointment and qualification.

The lien provided for by this section shall attach as of the date of the assignment for the benefit of creditors or of the initiation of the probate, insolvency, or bankruptcy proceedings: *Provided*, That this sentence shall not be construed as affecting the validity or priority of any earlier lien that may have attached previously in favor of the state under any other section of this title.

Any administrator, executor, guardian, receiver or assignee for the benefit of creditors not giving the notification as provided for above shall become personally liable for payment of the taxes and all increases and penalties thereon.

82.32.290 Unlawful acts—Penalties. It shall be unlawful for any person to engage in business without having obtained a certificate of registration as provided herein; or to engage in business after his certificate of registration has been revoked by order of the tax commission; or to tear down or remove any order or notice posted by the commission; or to make any false or fraudulent return or false statement in any return, with intent to defraud the state or evade the payment of any tax or part thereof; or for any person to aid or abet another in any attempt to evade the payment of such tax or any part thereof; or for the president, vice president, secretary, treasurer, or other officer of any company to make or permit to be made for any company any false return, or any false statement in any return, with intent to evade payment of any tax hereunder; or for the president, vice president, secretary, treasurer, or other officer of any company to carry on the business of any company which has not obtained a certificate of registration or whose certificate of registration has been revoked by order of the commission; or for any purchaser to fraudulently sign a resale certificate without intent to resell the property purchased; or for any person to fail

or refuse to permit the examination of any book, paper, account, record, or other data by the commission or its duly authorized agent; or to fail or refuse to permit the inspection or appraisal of any property by the commission or its duly authorized agent; or to refuse to offer testimony or produce any record as required.

Any person violating any of the provisions of this section shall be guilty of a gross misdemeanor.

In addition to the foregoing penalties, any person who knowingly swears to or verifies any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, shall be guilty of the offense of perjury in the second degree; and any company for which a false return, or a return containing a false statement, as aforesaid, is made, shall be punished, upon conviction thereof, by a fine of not more than one thousand dollars. All penalties or punishments provided in this section shall be in addition to all other penalties provided by law.